

and the exception of paragraph (c)(1) of this section applies. Accordingly, when determining whether FS is a surrogate foreign corporation, the FS stock held by P is included in the denominator, but not the numerator of the ownership fraction. However, under paragraph (b) of this section, the FS stock held by USS is not included in either the numerator or denominator of the ownership fraction. Accordingly, the ownership fraction is  $\frac{14}{70}$ , or 20 percent, since only the stock held by A is included in the numerator, and the stock held by both P and A is included in the denominator. Accordingly, FS is not a surrogate foreign corporation.

*Example 7. Loss of control—(i) Facts.* P, a corporation, holds all the outstanding stock of USS, a domestic corporation. B, a corporation unrelated to P, holds all 60 outstanding shares of FS, a foreign corporation. P transfers to FS all the outstanding stock of USS in exchange for 40 newly issued shares of FS.

(ii) *Analysis.* FS has indirectly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. After the acquisition, B holds 60 percent of the outstanding shares of the FS stock. Accordingly, B, FS and USS are members of an EAG. After the acquisition, P does not hold directly or indirectly more than 50 percent of the stock (by vote or value) of any member of the EAG and, thus, the acquisition results in a loss of control described in paragraph (c)(3) of this section. Accordingly, under paragraph (c)(1) of this section, the FS stock owned by B is included in the denominator, but not in the numerator, of the ownership fraction. Therefore, the ownership fraction is  $\frac{40}{100}$ . FS is not a surrogate foreign corporation.

*Example 8. Internal group restructuring; partnership—(i) Facts.* LLC, a Delaware limited liability company, is engaged in the conduct of a trade or business. P, a corporation, holds 90 percent of the interests of LLC. A, a person unrelated to P, holds 10 percent of the interests of LLC. LLC has not elected to be treated as an association taxable as a corporation. P and A transfer their interests in LLC to FS, a newly formed foreign corporation, in exchange for 90 shares and 10 shares, respectively, of FS's stock, which are all of the outstanding shares of FS. Accordingly, LLC becomes a disregarded entity.

(ii) *Analysis.* Prior to the FS's acquisition of the interests of LLC, LLC was a domestic partnership for Federal income tax purposes. FS has acquired substantially all the properties constituting a trade or business of LLC pursuant to a plan. After the acquisition, P holds 90 percent of FS's stock (by vote and value) by reason of holding a capital and profits interest in LLC, and A holds 10 percent of FS's stock (by vote and value) by reason of holding a capital and profits interest in LLC. The internal group restructuring exception under paragraph (c)(2) of

this section applies, because before the acquisition, P held 80 percent or more of the capital and profits interest in LLC, and after the acquisition, P holds 80 percent or more of the stock (by vote and value) of FS. Under paragraph (c)(1) of this section, the FS stock held by P is included in the denominator, but not the numerator, of the ownership fraction. Accordingly, the ownership fraction is  $\frac{10}{100}$ . FS is not a surrogate foreign corporation.

(g) *Effective/applicability date.* Except as otherwise provided in this paragraph, this section shall apply to acquisitions completed on or after May 20, 2008. This section shall not, however, apply to an acquisition that was completed on or after May 20, 2008, provided such acquisition was entered into pursuant to a written agreement which was (subject to customary conditions) binding prior to May 20, 2008, and at all times thereafter (binding commitment). For purposes of the preceding sentence, a binding commitment shall include entering into options and similar interests in connection with one or more written agreements described in the preceding sentence. Notwithstanding the general application of this paragraph, taxpayers may elect to apply this section to prior acquisitions, but must apply it consistently to all acquisitions within its scope.

[T.D. 9399, 73 FR 29057, May 20, 2008, as amended by T.D. 9453, 74 FR 27926, June 12, 2009]

**§ 1.7874-1T Disregard of affiliate-owned stock (temporary).**

(a) through (d) [Reserved] For further guidance, see § 1.7874-1(a) through (d).

(e) *Stock held by a partnership.* For purposes of this section, each partner in a partnership shall be treated as holding its proportionate share of stock held by the partnership, as determined under the rules and principles of sections 701 through 777.

(f) [Reserved] For further guidance, see § 1.7874-1(f).

(g) *Effective/applicability date.* Paragraph (e) of this section shall apply to acquisitions completed on or after June 9, 2009. See § 1.7874-1(e), as contained in 26 CFR part 1 revised as of April 1, 2009, for transactions completed before June 9, 2009.

(h) *Expiration date.* The applicability of this section expires on or before June 8, 2012.

[T.D. 9453, 74 FR 27926, June 12, 2009]

**§ 1.7874-2T Surrogate foreign corporation (temporary).**

(a) *Scope.* This section provides rules for determining whether a foreign corporation shall be treated as a surrogate foreign corporation under section 7874(a)(2)(B). Paragraph (b) of this section provides definitions and special rules. Paragraph (c) of this section provides rules to determine whether a foreign corporation has indirectly acquired properties held by a domestic corporation (or of a partnership). Paragraph (d) of this section provides rules that apply when two or more foreign corporations complete, in the aggregate, an acquisition described in section 7874(a)(2)(B)(i). Paragraph (e) of this section provides rules that apply when a single foreign corporation completes more than one acquisition described in section 7874(a)(2)(B)(i). Paragraph (f) of this section provides rules to identify the stock of a foreign corporation that is held by reason of holding stock in a domestic corporation (or an interest in a domestic partnership). Paragraph (g) of this section provides rules concerning the substantial business activities condition of section 7874(a)(2)(B)(iii). Paragraph (h) of this section provides rules that treat certain publicly traded foreign partnerships as foreign corporations for purposes of section 7874. Paragraph (i) of this section is reserved. Paragraph (j) of this section provides rules concerning the treatment of certain options (or similar interests) for purposes of section 7874. Paragraph (k) of this section provides rules that treat certain interests (including debt, stock, or a partnership interest) as stock of a foreign corporation for purposes of section 7874. Paragraph (l) of this section is reserved. Paragraph (m) of this section provides rules concerning the conversion of a foreign corporation to a domestic corporation by reason of section 7874(b). Paragraph (n) of this section provides examples that illustrate the rules of this section. Paragraph (o) of this section provides the effective/applicability dates of this section.

Paragraph (p) of this section provides the expiration date of this section.

(b) *Definitions and special rules.* Except as otherwise indicated, the following definitions and special rules apply for purposes of this section.

(1) The rules of this section are subject to section 7874(c)(4).

(2) An *interest* in a partnership includes a capital or profits interest.

(3) A *former shareholder* of a domestic corporation is any person that held stock in the domestic corporation before the acquisition described in section 7874(a)(2)(B)(i), including any person that holds stock in the domestic corporation both before and after the acquisition.

(4) A *former partner* of a domestic partnership is any person that held an interest in the domestic partnership before the acquisition described in section 7874(a)(2)(B)(i), including any person that holds an interest in the domestic partnership both before and after the acquisition.

(5) References to *properties held* by a domestic corporation include properties held directly or indirectly by the domestic corporation.

(6) The rules and principles of sections 701 through 777 shall be applied for purposes of determining a proportionate amount (or share) of items of a partnership (such as stock, properties, activities and employees).

(7) Any reference to the acquisition of properties held by a domestic corporation (or of a partnership) includes a direct or indirect acquisition of such properties.

(8) In the case of an acquisition of stock of a domestic corporation or an interest in a partnership, the proportionate amount of properties held by the domestic corporation (or of the partnership) that is treated as indirectly acquired shall, as applicable, be determined on the date of the acquisition based on the relative value of—

(i) The stock acquired compared to all outstanding stock of the domestic corporation; or

(ii) The interest acquired compared to all interests in the partnership.

(9) The determination of whether a foreign corporation is a surrogate foreign corporation is made after the acquisition described in section